IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 90 of 1984

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL JAGJIVANDAS DUBAL

Versus

DHIRAJLAL BAPALAL GANDHI [SINCE DECEASED] THROUGH HEIRS

Appearance:

1. Civil Revision Application No. 90 of 1984

MR GAURANG H BHATT for Petitioner No. 1

MR PS CHAMPANERI for Respondent No. 1,2-7

..... for Respondent No. 1/1-1/3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/08/2002

ORAL JUDGEMENT

The petitioner [hereinafter referred to as, "the Defendant"] challenges the judgment and order dated 22nd November, 1983 passed by the learned Assistant Judge, Surendranagar in Regular Civil Appeal No. 9 of 1982. The defendant was the tenant of Shop No. 1, situated at Moti Chowk, Wadhwan belonging to the plaintiff one Bapalal J. Gandhi. The suit shop was given to the defendant for a monthly rent of Rs. 23/=. It appears that the defendant was in arrears of rent for more than six months. The said Bapalal Gandhi gave a notice dated 12th December, 1977 of demand. However, the defendant failed to make the payment of the amount of arrears of rent. The said Bapalal Gandhi, therefore, instituted Regular Civil Suit No. 34 of 1978 in the Court of Civil Judge [JD], Wadhwan for recovery of possession of the suit shop.

The learned trial Judge under his judgment and order dated 31st December, 1981 was pleased to dismiss the suit. Feeling aggrieved, the plaintiff preferred the above Regular Civil Appeal No. 9 of 1982 in the Court of learned Assistant Judge, Surendranagar. The said appeal was allowed by the learned Assistant Judge on 22nd November, 1983. Feeling aggrieved, the defendant has preferred the present Revision Application under section 29 (2) of the Bombay Rents, Hotel & Lodging Houses Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

It is not disputed that the defendant is the tenant of the suit shop for a monthly rent of Rs. 23/=. It is also not disputed that the defendant had not paid the rent as claimed in the notice nor it is disputed that pending the suit, the defendant did not deposit the amount of rent regularly in the Court. Mr. Bhatt, however, has submitted that since the defendant had raised dispute as regards the standard rent in his written statement, unless and until the standard rent was determined by the Court, the defendant was not duty bound to deposit the contractual rent in the Court regularly, as envisaged under section 12 (3) (b) of the Rent Act. In support of his arguments, he has relied upon the judgments of the Hon'ble Supreme Court in the matters of Devkaran Nenshi Tanna (dead) by LR's v. Manharlal Nenshi & Anr. [AIR (1994) SC 2747]; of Prithvichand Ramchand Sablok v. S.Y Shinde [AIR (1993) SC 1929]. He has also relied upon the judgment of this Court in the matter of Naranbhai Nathabhai Koli v. Modhia Panalal Maganlal [1982 (2) GLR 98].

The above referred judgments of the Hon'ble

Supreme Court relied upon by Mr. Bhatt are on the points other than the matter at issue and have no application to the facts of the present case.

This Court, in the matter of Naranbhai Nathabhai Koli [Supra] held that it is not necessary to raise dispute as regards the standard rent by making a separate application. Suffice, if such dispute is raised by taking necessary plea in the written statement. However, the said judgment does not lay down good law inasmuch as the same is contrary to the earlier judgments of this Court in the matters of Shah Ambalal Chhotalal v. Shah Babaldas Dahyabhai [3 GLR p-625] and of Chunilal Shivlal (by his general power-of-attorney holder Sumanlal chunilal) v. Chimanlal Nagindas [7 GLR p-945] and also the judgment of the Hon'ble Supreme Court in the matters of Shah Dhansukhlal Chhaganlal v. Dalichand Virchand Shroff (decd.) by his legal representatives [AIR 1968 SC 1109]. The said view has been followed by this Court in the latter judgments in the matter of Ramniklal Dwarkadas Modi v. Mohanlal Laxmichand & Ors. [18 GLR 32] and of Rafikbhai Husainbhai Chauhan v. Soni Ghanshyambhai Popatlal [2001 (2) GLH (UJ) 3].

It is not disputed that in answer to the suit notice, the defendant did not pay the arrears of rent to the plaintiff-landlord nor did defendant raise dispute as regards the standard rent, as envisaged under section 11 (3) of the Rent Act. It is equally undisputed that the defendant did not deposit the monthly rent in the Court pending the suit before the trial Court. It is, therefore, held that the defendant was not entitled to protection against eviction as envisaged under section 12 (3) (b) of the Rent Act.

In above view of the matter, as held by the Hon'ble Supreme Court and this Court, the defendant is not entitled to protection under section 12 (3)(b) of the Rent Act. The defendant cannot escape the decree for eviction. Hence, in my view, the court below has rightly passed the decree for possession of the suit shop. The same, therefore, does not warrant interference. The Revision Application is dismissed with costs. Rule is discharged. Ad-interim relief is vacated.

[Ms. R.M Doshit, J.]

Prakash*